IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 6 of 1992

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SALAUDDIN ABUBAKAR DADU - Petitioner(s)

Versus

BHUPENDRA MAGANLAL MODI - Respondent(s)

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Appearance :
MR IM PANDYA for Petitioner No(s).: 1.
MR RC JANI for Respondent No(s).: 1.
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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
Date : 16/08/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 11th October, 1991 passed by the learned District Judge, Valsad in Regular Civil Appeal No.53/1990, the respondent (defendant in Regular Civil Suit No.119/1988) has preferred the present Revision Application under Section

29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, **"the Rent Act"**).

The respondent-plaintiff is the owner of the suit shop situated in Jay Jalaram Shopping Centre at Pardi. The suit shop was leased to the petitioner-defendant for a monthly rent of Rs.201=00. The plaintiff instituted Regular Civil Suit No.119/1988 in the Court of learned Civil Judge (J.D.), Pardi for recovery of possession of the suit shop and the amount of arrears of rent. According to the plaintiff the defendant was in arrears of rent since 1st April, 1984. Notice of demand was given to the defendant as envisaged by Section 12(2) of the Rent Act. The said notice of demand was duly received by the defendant. The defendant, however, neglected to pay the amount of rent demanded. Therefore, the suit. The suit was contested by the defendant vide written statement Exh.13. He denied that he had received the notice of demand given under Section 12(2) of the Rent Act. The learned Civil Judge, by judgment and order dated 31st November, 1990, dismissed the suit for possession but allowed the suit for recovery of the amount of rent due. Accordingly, a decree was passed partially in favour of the plaintiff. The learned Civil Judge was of the opinion

that the suit notice Exh.20 was not legal and valid and that the plaintiff had failed to prove that it was duly served upon the defendant. Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No.53/1990 in the Court of learned District Judge, Valsad. The Appeal came to be allowed by the learned District Judge. A decree for possession was passed in favour of the plaintiff. Therefore, the present Revision Application.

Mr.Pandya has submitted that the defendant had denied the signature on the acknowledgment Exh.21. However, the lower appellate Court erroneously held that it was proved by the evidence of the plaintiff. He has submitted that once the defendant had denied the signature on the acknowledgment Exh.21, unless the plaintiff proved the service of the notice by examining the concerned Postman the service of the suit notice Exh.20 could not be said to have been proved. He has further submitted that Section 12(2) of the Rent Act envisages a notice of one month. However, in the present case, under the suit notice Exh.20 the plaintiff demanded remittance of the amount of arrears of rent and also terminated the tenancy as envisaged by Section 106 of the Transfer of Property Act i.e. the defendant was not given

one month's notice to pay the amount of rent due. He has submitted that the trial Court had rightly held that the suit notice was not legal and valid. The lower appellate Court ought not to have interfered with the decision of the trial Court.

I am unable to agree with Mr.Pandya. It should be noted that both the Courts below have recorded concurrent finding that the agreed rent of the suit shop was Rs.201=00 per month; that the rent was payable by month; that the defendant was in arrears of rent since 1st April, 1984 as alleged; that there was no dispute as to the standard rent of the suit shop and that the defendant did not pay the rent demanded within one month from the date of the service of the notice of demand. The above referred facts recorded by the trial Court were not challenged by the defendant before the lower appellate Court. Even before this Court the facts stated above are not challenged. The matter was, thus, clearly governed by Section 12(3)(a) of the Rent Act and decree for eviction was inevitable.

The suit notice Exh.20 was a composite notice i.e. the notice of demand as envisaged by Section 12(2) of the

Rent Act and notice of termination of tenancy as envisaged by Section 106 of the Transfer of Property Act. It is well-settled that for eviction under the Rent Control Act a landlord is required to establish a case for eviction as envisaged by the Rent Control Act. Notice of termination of tenancy as envisaged by Section 106 of the Transfer of Property Act is not a mandatory requirement but a mere surplusage. In any case, after the suit notice given on 4th April, 1988 the suit was instituted in the month of September, 1988 i.e. more than a month after the date of the service of the suit notice. As to the service of the suit notice; on comparison of admitted signature of the defendant put on the written statement with the signature on the acknowledgment Exh.21, there is no manner of doubt that the signature on acknowledgment Exh.21 was that of the defendant. I am, therefore, of the opinion that the defendant did receive the suit notice on 6th April, 1988 as evidenced by the acknowledgment Exh.21. Nevertheless, the defendant did not pay the amount of arrears of rent within one month therefrom. The defendant was, therefore, liable to be evicted as envisaged by Section 12(3)(a) of the Rent Act.

No case for interference is made out. The Revision Application is dismissed with cost. Rule is discharged.

Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

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